

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID GLASS,

Petitioner-Appellant,

v

COUNTY OF GRAND TRAVERSE,

Respondent-Appellee.

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UNPUBLISHED

June 21, 2007

No. 267286

Tax Tribunal

LC No. 00-311639

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Petitioner appeals as of right from the order of the Tax Tribunal denying his homestead exemption (principal residence exemption) claim from his property taxes concerning the subject property for the tax years 2001 through 2004. We affirm.

During 2001 through 2003, petitioner and his wife filed joint Georgia income tax returns in which they represented that they were full-year residents of that state. Shortly after petitioner purchased a home in Georgia in May 2004, he filed requests to rescind his homestead exemption claim as of May 13, 2004 concerning the subject property. The Grand Traverse County Equalization Director denied petitioner's homestead exemption on the property for tax years 2001 through 2004, asserting that the property was not petitioner's principal residence. Petitioner appealed to the Small Claims Division of the Tax Tribunal, claiming that he was entitled to the exemption because the subject property was his principal residence for the 2001 through 2003 tax years. Petitioner acknowledged that the third 2003 amendment<sup>1</sup> to the homestead exemption statute, MCL 211.7cc, prohibited him from claiming an exemption for the 2004 tax year because he had filed an out of state income tax return.

According to the facts submitted before the tribunal, petitioner worked as a professional baseball umpire in the minor leagues, which required him to travel extensively. His wife's employment required her to spend extended periods of time in Atlanta, Georgia, where she rented an apartment. While there was contrary indicia that petitioner's principal residence was the subject property, the hearing referee found that the circumstances of the filing of the joint Georgia income tax returns established that petitioner's principal residence was not the subject property. Additionally, the referee noted that under the amended version of MCL 211.7cc(3),

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<sup>1</sup> 247 PA 2003.

petitioner was barred from claiming the exemption because he filed the out of state tax returns as a resident of that state. The Tax Tribunal adopted the referee's proposed opinion and order denying petitioner's claim for an exemption.

A party claiming a tax exemption has the burden of proving the exemption is available by a preponderance of the evidence. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002). When fraud is not claimed, the Tax Tribunal's decision is reviewed for misapplication of the law or adoption of a wrong principle. *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). The tribunal's factual findings are conclusive if they are supported by competent, material, and substantial evidence on the whole record. *Id.* "Substantial evidence is 'the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion,' and it may be 'substantially less than a preponderance.'" *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 221-222; 668 NW2d 181 (2003) (citation omitted).

Petitioner first argues that the tribunal improperly applied the 2003 amendments of MCL 211.7cc(3)(d) retroactively. We need not reach this issue because it is clear that the tribunal's principle reason for denying the exemption was the issue of petitioner's principal residence, which we address below.

Petitioner argues that in concluding that the subject property was not his principal residence, the tribunal erred by failing to recognize that the filing of a joint tax return in another state did not prevent petitioner from obtaining the exemption. Citing *Stege v Dep't of Treasury*, 252 Mich App 183; 651 NW2d 164 (2002),<sup>2</sup> petitioner argues that he was not automatically barred from claiming a homestead exemption for the 2001 through 2003 tax years by his representation in the 2001 through 2003 joint Georgia income tax returns that he was a full-year resident of that state.

The relevant statutory language states that "[p]rincipal residence' means the 1 place where a person has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal

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<sup>2</sup> The issue in *Stege* was whether a married couple who filed joint Michigan income taxes as nonresidents could claim a homestead exemption if only one spouse was a Michigan resident and the couple had claimed a similar property tax credit in another state for a home in that state where they had filed their income tax returns as residents. *Stege, supra* at 187. The *Stege* Court made three dispositive holdings:

- (1) Michigan's property tax act homestead exemption applies only to real property in Michigan;
  - (2) the homestead tax credit under Illinois' Income Tax Act is distinct from Michigan's property tax homestead exemption; and
  - (3) the Michigan Tax Tribunal does not have authority to interpret another state's tax laws against Michigan taxpayers absent a reciprocal tax agreement with that state.
- [*Id.* at 190-191.]

In holding as such, the Court noted that the petitioners were not automatically barred by their representations on their Michigan income tax returns that they were nonresidents of this State. *Id.* at 191.

residence is established.” MCL 211.7dd(c).<sup>3</sup> In that regard, the hearing referee acknowledged that petitioner had submitted substantial evidence to support his contention that the subject property was his principal residence. Nevertheless, the referee concluded that “the most conclusive evidence of where he called ‘home’ are the” Georgia tax returns. The characterization of this evidence as being “most conclusive” presupposes that it is not dispositive all by itself. The superlative “most” signals that the referee recognized that other evidence was relevant to the question.

The tribunal specifically agreed with the referee’s evaluation of the relative weight of the Georgia returns. Further, the tribunal clearly signaled its recognition that the existence of the Georgia returns was not dispositive when it observed that “[i]t is not merely the filing of such returns that provides the evidence.” Rather, the tribunal noted that the following circumstances related to the filing of the returns were critical:

[I]t is clear that Petitioner had a choice when filing the Georgia returns of claiming to be full year residents, part-year residents or non-residents. Additionally, Petitioner had a choice to file married separate returns with his spouse indicating that he was a Michigan resident. In 2001, 2002, and 2003 Petitioner filed a joint return in Georgia as a full year resident. In addition, there were no Michigan returns submitted to the Tribunal for those years. This indicates that there was no effort to indicate that Petitioner’s residence was in Michigan, at all . . . .

While there was indicia to the contrary, because the tribunal’s factual findings are supported by competent, material, and substantial evidence on the whole record, they are conclusive. See *Wexford Medical Group, supra* at 201.

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Patrick M. Meter

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<sup>3</sup> As provided under the version amended by 476 PA 1996, effective December 26, 1996.